

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

**THE GENTLE WIND PROJECT, et al., )**

)

**Plaintiffs )**

)

**v. )**

**Docket No. 04-103-P-C**

)

**JUDY GARVEY, et al., )**

)

**Defendants )**

)

**MEMORANDUM DECISION ON PLAINTIFFS' MOTION TO RECONSIDER**

On September 2, 2004 I issued a recommended decision on the motion of defendants Garvey, Bergin and J.F. Bergin Company to dismiss Counts I and II asserted against them. Recommended Decision on Motion of Defendants Garvey, Bergin and J.F. Bergin Company to Dismiss (Docket No. 36). In response to that decision, which recommended dismissal, *id.* at 11, the plaintiffs filed on September 13, 2004 an amended complaint, a motion to reconsider the recommended decision, and an objection to the recommended decision. Docket Nos. 37-39. The defendants who brought the motion to dismiss have filed a response to that objection. Docket No. 58. They have not responded to the motion to reconsider.

The plaintiffs seek reconsideration of the recommended decision based on the amended complaint, which they characterize as “addressing what the Recommended Decision cites as pleading deficiencies with Counts I and II of the Complaint.” Plaintiffs’ Motion to Reconsider Recommended Decision on Motion of Defendants Judy Garvey, James Bergin, and J.F. Bergin Company to Dismiss, etc. (Docket No.38) at 1. The plaintiffs acknowledge that the amended complaint does not address all of the considerations on which

the recommended decision was based, but aver that granting the motion to reconsider “would narrow the basis thereof, narrowing the issues and streamlining the necessary review by the Court on Plaintiffs’ objections to the Recommended Decision.” *Id.* at 2.

There are three circumstances in which a court may appropriately grant a motion for reconsideration: 1) where the court made a manifest error of fact or law; 2) where there is newly discovered evidence; and 3) where there has been a change in the law.

*McLaughlin v. UNUM Life Ins. Co. of Am.*, 212 F.R.D. 40, 41 (D. Me. 2002). The motion for reconsideration in this case presents none of these circumstances. My recommended decision was based on the initial complaint, which the plaintiffs did not amend until after the recommended decision was issued. The plaintiffs chose to rely on the initial complaint throughout my consideration of the motion to dismiss. Their motion for reconsideration is based solely on the amended complaint, which was not before the court at the time the recommended decision was issued. The motion for reconsideration is inappropriate under the circumstances, where none of the recognized bases for reconsideration is presented and where the party moving for reconsideration admits that reconsideration will not change the recommendation made in the decision at issue.

The motion to reconsider is **DENIED**.

Dated this 7th day of October 2004.

/s/ David M. Cohen  
David M. Cohen  
United States Magistrate Judge

**Plaintiff**

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**GENTLE WIND PROJECT**

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**Defendant**

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